

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

TERRY GALLAGHER,

Petitioner,

vs.

Case No. 3:05cv414

UNITED STATES OF AMERICA,

JUDGE WALTER HERBERT RICE

Respondent.

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DECISION AND ENTRY ADOPTING INITIAL (DOC. #2) AND SUPPLEMENTAL (DOC. #3) REPORTS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE; PETITIONER'S OBJECTIONS TO INITIAL REPORT AND RECOMMENDATIONS OVERRULED; PETITIONER'S MOTION TO VACATE AND SET ASIDE UNDER 28 U.S.C. SECTION 2255 DISMISSED, WITH PREJUDICE, AS BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS; CERTIFICATE OF APPEALABILITY DENIED; REQUEST TO APPEAL *IN FORMA PAUPERIS* DENIED; JUDGMENT TO ENTER ACCORDINGLY; TERMINATION ENTRY

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Based upon the reasoning and citations of authority set forth by the United States Magistrate Judge in his Initial (Doc. #2) and Supplemental (Doc. #3) Report and Recommendations, as well as upon this Court's *de novo* review of the applicable law, said Reports and Recommendations are adopted in their entirety, and the captioned Motion is dismissed, with prejudice, as barred by the applicable statute of limitations. The Petitioner's Objections to the Initial such filing are overruled.

In so ruling, this Court concludes that the statute of limitations on any such filing by the Petitioner, setting forth the reasons advanced herein, expired on April 24, 1997, whereas the instant Motion was not filed until more than eight and one-half years later, on November 27, 2005.

Because reasonable jurists would not disagree with this Court's conclusion, Petitioner is denied a Certificate of Appealability. Given that any appeal from this decision would be objectively frivolous, his request to appeal *in forma pauperis* is denied.

Petitioner's *Pro Se* Motion, filed July 3, 2006, requesting this Court to rule on the captioned Motion, is deemed to be moot.

Judgment is ordered entered in favor of the Respondent and against Petitioner herein, dismissing the Petitioner's Motion to Vacate, etc., with prejudice, as barred by the applicable statute of limitations.

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

/s/ Walter Herbert Rice

September 1, 2006

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WALTER HERBERT RICE  
UNITED STATES DISTRICT JUDGE

Copies to:

Terry Gallagher, Pro Se